

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE HP INKJET PRINTER ) CV-05-3580-JF  
LITIGATION )  
 ) SAN JOSE, CALIFORNIA  
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 ) JANUARY 28, 2011  
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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JEREMY FOGEL  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: BERK LAW, LCC  
BY: STEVEN BERK  
1225 FIFTEENTH STREET, NW  
WASHINGTON, DC 20005

FOR THE DEFENDANT: GIBSON DUNN & CRUTCHER, LLP  
BY: SAMUEL LIVERSIDGE  
333 SOUTH GRAND AVENUE  
LOS ANGELES, CA 90071

(APPEARANCES CONTINUED ON THE NEXT PAGE)

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

1 FOR THE PLAINTIFF: COTCHETT, PITRE & MCCARTHY  
2 BY: NIALL MCCARTHY  
3 JUSTIN BERGER  
4 840 MALCOLM ROAD  
5 SUITE 200  
6 BURLINGAME, CA 94010

5 OBJECTOR: CENTER FOR CLASS ACTION FAIRNESS  
6 SCHRATWIESER BY: THEODORE FRANK  
7 1718 M. STREET NW  
8 NO. 236  
9 WASHINGTON, DC 20036

9 OBJECTOR: HELFAND LAW OFFICES  
10 KAHLE BY: STEVEN HELFAND  
11 MCDONALD 582 MARKET STREET  
12 SUITE 1400  
13 SAN FRANCISCO, CA 94104

13 OBJECTOR: ATTORNEY AT LAW  
14 COLBURN BY: STEVE MILLER  
15 1625 LARIMER STREET  
16 DENVER, CO 80202  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 SAN JOSE, CALIFORNIA

JANUARY 28, 2011

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE  
4 FOLLOWING PROCEEDINGS WERE HELD:)

5 THE COURT: THEN THE LAST MATTER, AND I  
6 KNOW WE HAVE A NUMBER OF PEOPLE HERE ON IT, THE HP  
7 INKJET PRINTER LITIGATION.

8 MR. BERK: GOOD MORNING, YOUR HONOR.

9 THE COURT: GO AHEAD. I NEED EVERYONE'S  
10 APPEARANCES.

11 MR. BERK: STEVEN BERK ON BEHALF OF THE  
12 PLAINTIFF.

13 MR. MCCARTHY: NIALL MCCARTHY ON BEHALF  
14 OF PLAINTIFFS.

15 MR. BERGER: JUSTIN BERGER ON BEHALF OF  
16 PLAINTIFFS.

17 MR. LIVERSIDGE: GOOD MORNING,  
18 YOUR HONOR. SAM LIVERSIDGE ON BEHALF OF  
19 HEWLETT-PACKARD COMPANY.

20 MR. CORBEL: CHRIS CORBEL ALSO ON BEHALF  
21 OF HEWLETT-PACKARD COMPANY.

22 MR. FRANK: THEODORE FRANK ON BEHALF OF  
23 THE SCHRATWIESER OBJECTORS.

24 MR. HELFAND: GOOD MORNING, YOUR HONOR.  
25 STEVEN HELFAND ON BEHALF OF OBJECTOR LISA KAHLE AND

1 SARAH MCDONALD.

2 MR. MILLER: AND ONE MORE, YOUR HONOR.

3 THE COURT: OH, I'M SORRY, SIR.

4 MR. MILLER: STEVE MILLER ON BEHALF OF  
5 ACTOR DEBORAH COLBURN.

6 THE COURT: THANK YOU.

7 THERE WAS ANOTHER OBJECTION BY  
8 LORI SINGER MEYER WHO INDICATED SHE COULD NOT BE  
9 PRESENT BUT WHOSE OBJECTION IS BEFORE THE COURT.

10 SO LET ME ADDRESS A COUPLE OF THINGS.  
11 FIRST OF ALL, WITH REGARD TO THE ABILITY OF PEOPLE  
12 TO OPT OUT, IF SOMEONE COULD JUST WALK ME THROUGH  
13 EXACTLY WHERE WE ARE WITH THAT.

14 IS THAT OVER AND DONE WITH OR IS THAT  
15 SOMETHING THAT COULD STILL HAPPEN IF THE COURT  
16 APPROVES THE MATTER? AND HOW MANY OPT OUTS HAVE  
17 THERE BEEN?

18 WHAT CAN YOU TELL ME ABOUT THAT.

19 MR. LIVERSIDGE: YOUR HONOR, THE OPT OUT  
20 DEADLINE HAS PASSED AND THERE WERE 810 OPT OUTS.

21 THE COURT: OUT OF HOW MANY NOTICES?

22 MR. LIVERSIDGE: E-MAIL NOTICES WERE SENT  
23 OUT TO 13,387,000. WE ALSO DID PUBLICATION NOTICE.

24 WE ARE IN A BIT OF A WORLD WHERE WE DON'T  
25 KNOW EXACTLY HOW MANY PEOPLE ARE IN THE CLASS

1 BECAUSE PEOPLE COULD BUY MULTIPLE PRINTERS. WE  
2 KNOW IN TERMS OF UNITS WHAT WE ARE LOOKING AT.

3 THE COURT: SO THE OPT OUT RATE WAS VERY  
4 SMALL.

5 MR. LIVERSIDGE: VERY SMALL, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 I GUESS ANOTHER QUESTION, THIS IS SORT OF  
8 BROUGHT TO MIND BY THE OBJECTION THAT MS. MEYER  
9 FILED. SHE INDICATED THAT THE ISSUE WHETHER THERE  
10 SHOULD BE A NATIONWIDE CLASS IS A MATTER THE COURT  
11 TOOK UP AND IT WAS LITIGATED AND THE COURT  
12 DETERMINED THERE SHOULDN'T BE A NATIONWIDE CLASS.

13 NONETHELESS, SETTLEMENT IS A NATIONWIDE  
14 SETTLEMENT. AND HER OBJECTION WAS THAT THERE'S AN  
15 INHERENT UNFAIRNESS IN THAT.

16 I GUESS I WOULD LIKE A LITTLE BIT OF  
17 THOUGHT FROM ALL OF THE SETTLING PARTIES ON THAT  
18 BECAUSE IT CONCERNS ME.

19 ONE OF THE CONCERNS I HAD WAS BECAUSE OF  
20 DIFFERENT CONSUMER PROTECTION LAWS IN DIFFERENT  
21 STATES THAT A NATIONWIDE SETTLEMENT MIGHT BE  
22 PROBLEMATIC, AND YET THAT'S WHAT I'M BEING ASKED TO  
23 APPROVE.

24 SO WHAT ABOUT THE RIGHTS OF FOLKS IN  
25 OTHER STATES WHO HAVE BEEN BROUGHT INTO THIS

1 SETTLEMENT?

2 MR. LIVERSIDGE: YOUR HONOR, I WILL JUST  
3 MAKE A COUPLE OF COMMENTS ON THAT.

4 I THINK THE COURT'S DECISION DENYING THE  
5 NATIONWIDE CLASS WAS ON MANAGEABILITY GROUNDS. I  
6 THINK THE NINTH CIRCUIT HAS MADE PRETTY CLEAR THAT  
7 THAT IS NOT AN ISSUE THAT'S PHASED WHEN YOU'RE  
8 DOING A SETTLED CLASS.

9 SO I DON'T THINK ANYTHING THAT THE COURT  
10 RULED WOULD PRECLUDE THIS NATIONWIDE CERTIFICATION.

11 I THINK I WOULD ALSO POINT OUT THAT, YOU  
12 KNOW, ONE OF THE THINGS THAT WE THINK HAS BEEN  
13 ACHIEVED HERE IS A RESULT FOR CONSUMERS OUTSIDE OF  
14 CALIFORNIA WHERE WE WERE GOING FORWARD WITH A  
15 LITIGATED CASE HERE, THEY WOULD BE OUT OF LUCK  
16 UNLESS, YOU KNOW, PLAINTIFFS WERE TO GO  
17 STATE-BY-STATE.

18 SO WE THINK THAT'S SOMETHING THAT'S  
19 BROUGHT THROUGH THE SETTLEMENT HERE, BUT I DON'T  
20 THINK THERE'S ANYTHING IN THE LAW THAT PREVENTS US  
21 FROM NOW MOVING FORWARD WITH THIS NATIONWIDE  
22 SETTLEMENT CLASS.

23 THE COURT: OKAY. ANYONE ELSE?

24 MR. MCCARTHY: ONE OTHER OBSERVATION,  
25 YOUR HONOR.

1 AS OF THIS MORNING, WE HAVE ABOUT A  
2 150,000 SEPARATE COMPUTERS WITH CLAIMS REPRESENTING  
3 ABOUT A 110,000 DIFFERENT CLAIMANTS, AND A GREAT  
4 NUMBER OF THOSE ARE FROM OUTSIDE OF STATE.

5 SO WE HAVE A VERY HIGH PARTICIPATION RATE  
6 FROM OUTSIDE OF CALIFORNIA ON THE CLAIMS. I DON'T  
7 HAVE THE EXACT BREAKDOWN OF NON-CALIFORNIA, BUT WE  
8 CAN CERTAINLY SUBMIT IT TO THE COURT.

9 THE COURT: OKAY.

10 THEN LET ME ADDRESS TO THE OBJECTORS  
11 THIS: I THINK ON THEIR FACE THE OBJECTIONS ARE  
12 WORTH THINKING ABOUT BECAUSE COUPON SETTLEMENTS  
13 HAVE BEEN INCREASINGLY DISCOURAGED, AND I REALIZE  
14 WE ARE TALKING ABOUT E-CREDITS HERE AND NOT  
15 COUPONS, BUT I THINK THERE'S SOMETHING TO BE SAID  
16 FOR THE ARGUMENT THAT E-CREDITS ARE TODAY'S  
17 COUPONS, AT LEAST FOR THE COMPUTER BUSINESS.

18 AND THE INDIVIDUAL CLASS MEMBER'S  
19 RECOVERY IS PRETTY SMALL. I THINK THAT'S ALL TRUE.  
20 BUT THE -- IF THE RECOVERY THAT THEY WOULD HAVE HAD  
21 IF THE CASE HAD GONE TO TRIAL OR SHOULD HAVE HAD IS  
22 ALSO VERY SMALL BECAUSE IT'S NOT A VERY BIG CASE IN  
23 THE FIRST PLACE.

24 THAT'S SOMETHING THE COURT HAS TO LOOK  
25 AT. AND NONE OF THE OBJECTIONS REALLY ADDRESS THE

1 MERITS OF THE CLAIMS.

2 AND THE COURT HAD I DON'T KNOW HOW MANY  
3 MOTIONS ON THIS -- THESE VARIOUS CASES, BUT THERE  
4 WERE A LOT. I MEAN, IT WAS SOMEWHERE BETWEEN 5 AND  
5 10 I THINK WHERE THE COURT -- THEY WEREN'T MERITS  
6 MOTIONS, BUT THEY WERE PLACES WHERE THE COURT HAD  
7 AN OPPORTUNITY TO EVALUATE THE STRENGTH OF THE  
8 CLAIMS.

9 AND THE COURT'S VIEW CONSISTENTLY HAS  
10 BEEN THAT WHILE CLAIMS WERE STATED, THE COURT WOULD  
11 HAVE DISMISSED THE ACTION OTHERWISE. THE CLAIMS  
12 ARE NOT PARTICULARLY STRONG, AND IT'S SIMPLY  
13 BECAUSE THE WHOLE IDEA THAT A CONSUMER WOULD BE  
14 DAMAGED BY A FALSE LOW INK WARNING IS A PROBLEMATIC  
15 CONCEPT.

16 I THINK TO BE VERY PERSONAL ABOUT IT,  
17 WHAT I DO IS I KEEP A LOT OF EXTRA PRINT CARTRIDGES  
18 IN MY HOUSE AND I USE THE CARTRIDGES UNTIL I RUN  
19 OUT. I DON'T PAY ATTENTION TO THE LOW INK WARNING  
20 BECAUSE I THE KNOW IT'S NOT ACCURATE.

21 SO THE NOTION THERE WERE MILLIONS OR  
22 BILLIONS OF DOLLARS OF DAMAGES FROM THESE THINGS OR  
23 THERE WAS SOME KIND OF FRAUD IS CERTAINLY ONE THAT  
24 REASONABLE MINDS WOULD CERTAINLY DIFFER ABOUT.

25 BUT IF YOU LOOK AT THE CASE THAT'S NOT



1 PARTICULARLY STRONG ON THE MERITS AND THE FACT THAT  
2 YOU DON'T HAVE A PARTICULARLY RICH SETTLEMENT  
3 DOESN'T MEAN AS MUCH.

4 SO I WOULD LIKE TO HEAR FROM THE  
5 OBJECTORS ABOUT THAT.

6 MR. FRANK: THANK YOU, YOUR HONOR.

7 TED FRANK.

8 I DON'T THINK OUR OBJECTION TURNS ON THE  
9 QUESTION OF WHETHER THE CASE COULD BE STRONGER. WE  
10 ARE NOT HERE SAYING THE SETTLEMENT COULD BE BETTER  
11 OR THIS CASE IS WORTH .07 CENTS A CLASS RATHER THAN  
12 .05 CENTS A CLASS MEMBER, AND THAT'S NOT OUR CLAIM.

13 OUR CLAIM IS THE SETTLEMENT IS STRUCTURED  
14 IN SUCH A WAY THAT IT BENEFITS THE ATTORNEYS AND  
15 THE DEFENDANTS AND NOT THE CLASS.

16 AND THAT IN AND OF ITSELF CREATES A  
17 PROBLEM UNDER RULE 23(E), AND THAT'S A VERY  
18 STRAIGHTFORWARD QUESTION OF APPLYING PRECEDENT FROM  
19 SYNFUEL, IN RE GENERAL MOTORS, TRUE V. HONDA WHICH  
20 I THINK IS AN EVEN EQUALLY MERITLESS CASE WHERE THE  
21 CLAIM WAS THE DISCLOSURES THAT THE GOVERNMENT  
22 REQUIRED REGARDING FUEL ECONOMY WEREN'T ACCURATE.

23 AND THERE THE CLASS MEMBERS GOT A \$500  
24 COUPON RATHER THAN A \$700 COUPON.

25 AND FINALLY FIGUEROA V. SHARPER IMAGE.

1           AND THESE ARE ALL CASES JUST LIKE THIS  
2           ONE WHERE IT'S A CONSUMER FRAUD SETTLEMENT  
3           STRUCTURED IN SUCH A WAY THAT THERE WERE THESE  
4           COUPONS THAT ACT AS A MARKETING PROGRAM FOR THE  
5           DEFENDANT THAT INCREASED THE DEFENDANT'S PROFITS  
6           WITH DISPROPORTIONATE ATTORNEYS FEES.

7           AND EVEN THOUGH THERE'S AN INJUNCTIVE  
8           RELIEF ON A PERSPECTIVE BASIS, THE COURT THROWS THE  
9           SETTLEMENTS OUT. AND IN FACT THE TWO APPELLATE  
10          COURTS REVIEWING THIS AND BOTH OF THESE CASES IN  
11          THE APPEAL'S COURT WERE BEFORE CAFA WAS PASSED  
12          SAYING YOU HAVE TO GIVE ADDITIONAL SCRUTINY TO  
13          COUPON SETTLEMENTS, SAID IT'S AN ABUSE OF  
14          DISCRETION TO APPROVE THESE. AND IN NONE OF THE  
15          BRIEFINGS DID THE PARTIES ADDRESS THESE CASES.

16          SO I THINK THIS IS A STRAIGHTFORWARD  
17          APPLICATION OF THE PRECEDENT IN THAT REGARD.

18          THE COURT: WHAT DO YOU DO WITH A WEAK  
19          CASE THEN?

20          MR. FRANK: WELL, CERTAINLY YOU CAN  
21          SETTLE IT, BUT YOU SETTLE IT IN A WAY THAT ONE, THE  
22          CLASS BENEFITS; AND TWO, THE CLASS BENEFITS MORE  
23          THAN THE ATTORNEYS BENEFIT.

24          THE COURT: WELL, BUT LET'S SAY THE  
25          BENEFIT TO THE CLASS -- I MEAN, THE IDEA THAT

1 PEOPLE WOULD GET A BREAK ON FUTURE PURCHASES OF INK  
2 CARTRIDGES DOES NOT STRIKE ME AS UNREASONABLE GIVEN  
3 WHAT I HAVE ALWAYS SEEN AS THE PROBLEM OF THE CASE  
4 ON THE MERITS TO BEGIN WITH.

5 SO WHAT ELSE CAN YOU DO IF YOU ARE  
6 HEWLETT-PACKARD AND YOU WANT TO AVOID SPENDING  
7 HUNDREDS OF THOUSANDS OF DOLLARS IN LITIGATION, IS  
8 IT KEY THAT YOU JUST DON'T GIVE AS MUCH TO THE  
9 LAWYERS, OR WHAT ELSE COULD ONE DO IN A SITUATION?

10 MR. FRANK: THERE ARE MULTIPLE THINGS YOU  
11 COULD DO.

12 ONE, YOU COULD MAKE THE COUPONS THESE  
13 COUPONS FUNGIBLE BECAUSE THERE'S A BENEFIT TO THE  
14 CLASS, THEY GET THE \$7 COUPONS AND THEY COULD TRADE  
15 THEM FOR \$6 IN A SECONDARY MARKET.

16 TWO, WE HAVE A COMPLETE DISCONNECT  
17 BETWEEN THE ATTORNEYS FEES AND THE COUPONS. WE  
18 HEARD THERE WERE 150,000 CLAIMS. WELL, LET'S DO  
19 THE MATH ON THAT, \$2 TO \$7 A CLAIM, YOU ARE TALKING  
20 LESS THAN A MILLION DOLLARS TO THE CLASS AND ALMOST  
21 \$3 MILLION TO THE ATTORNEYS. AND NOT JUST A  
22 MILLION DOLLARS TO THE CLASS, BUT AS ALL THE  
23 PRECEDENT SAYS, YOU CAN'T VALUE THESE COUPONS AT  
24 FACE VALUE.

25 AND YOU ESPECIALLY CAN'T DO IT HERE WHERE

1 IT'S -- THEY ARE ONLY GOOD FOR SIX MONTHS, THEY ARE  
2 NOT STACKABLE, THEY'RE ONLY GOOD AT HP.COM WHICH AS  
3 MY DECLARATION SHOWS CHARGES HIGHER PRICES THAN  
4 COMPETING VENDORS.

5 SO THE CLASS MEMBERS AREN'T EVEN GETTING  
6 THE FULL VALUE OF THE COUPON. IF I GET MY \$2  
7 COUPON, I CAN'T USE IT, OR IF I USE IT I'M PAYING  
8 MORE FOR MY INK CARTILAGE THAN WHEN I BUY IT AT  
9 AMAZON, AND THAT'S BEFORE ALL THE REBATES I GET  
10 FROM AMAZON.

11 SO WE HAVE THAT FUNDAMENTAL DISCONNECT,  
12 THAT FUNDAMENTAL PROBLEM.

13 THE COURT: ALL RIGHT.

14 SO YOU ARE SAYING THERE'S NOT, EVEN GIVEN  
15 THE RELATIVE WEAKNESS OF THE MERITS, THERE ARE  
16 OTHER WAYS THIS COULD HAVE BEEN STRUCTURED THAT  
17 WOULD HAVE BENEFITED THE CLASS MORE, THE RATIO  
18 BENEFIT TO THE CLASS VERSUS BENEFIT TO THE  
19 ATTORNEYS AND THE DEFENDANT COULD BE MADE BETTER.

20 THERE'S WAYS YOU COULD --

21 MR. FRANK: I DON'T WANT TO, YOU KNOW,  
22 SAY MAKE BETTER BECAUSE, YOU KNOW, THAT IMPLIES  
23 LET'S BLUE LINE THIS AND TWEAKING.

24 I'M SAYING YOU CAN'T STRUCTURE THE  
25 SETTLEMENT PERIOD IN SUCH A WAY THAT THE ATTORNEYS

1 BENEFIT MORE THAN THE CLASS DOES.

2 THE COURT: I GOT THAT.

3 THE END RESULT, I MEAN, I DON'T KNOW HOW  
4 YOU GET FROM HERE TO THERE WITHOUT, IN A SENSE,  
5 BLUE LINING THE SETTLEMENT. MAYBE YOU JUST DO IT  
6 USING YOUR BLUE PENCIL A LOT, BUT YOU CAN'T EXPECT  
7 THE DEFENDANT IN A CASE LIKE THIS TO PAY MORE THAN  
8 THE CASE IS WORTH.

9 MR. FRANK: I THINK THAT'S CORRECT, BUT  
10 THIS IS NOT A CASE WHERE THE DEFENDANTS ARE REALLY  
11 PAYING ANYTHING.

12 THIS IS A CASE WHERE THE DEFENDANTS ARE  
13 ACTUALLY PROFITING. I THINK THEY ARE GOING TO END  
14 UP --

15 THE COURT: ALL RIGHT.

16 THANK YOU FOR YOUR INPUT ON THAT.

17 ANY OF THE OTHER OBJECTORS WANT TO BE  
18 HEARD BEFORE I HEAR FROM PLAINTIFFS?

19 MR. MILLER: GOOD MORNING, YOUR HONOR.  
20 STEVE MILLER ON BEHALF OF DEBORAH COLBURN.

21 I'VE BEEN TRYING CASES FOR 30 YEARS AND  
22 I'M PRIMARILY A PLAINTIFF'S CONTINGENT FEE LAWYER  
23 AND EVERY NOW AND THEN I GET INVOLVED IN A CLASS  
24 ACTION SITUATION.

25 IF I WERE THE PLAINTIFFS -- IF I WERE ON

1 A CONTINGENT FEE AND AT THE END OF THE DAY IT'S  
2 DETERMINED THAT I HAVE A LOUSY CASE, A WEAK CASE,  
3 IF I LOSE THAT CASE I GET ZERO AS THE ATTORNEY.

4 IF IT'S A LOUSY CASE, IT'S GOING TO BE A  
5 SMALL SETTLEMENT AND MY CONTINGENT FEE IS GOING TO  
6 BE SMALL AS WELL BECAUSE IT'S GOING TO BE A  
7 PERCENTAGE OF THE RESULT ACHIEVED.

8 THAT'S NOT WHAT IS HAPPENING HERE. THE  
9 LAWYERS ARE BEING REWARDED ON A TIME BASIS FOR  
10 BRINGING A LOUSY CASE. HOWEVER, UNDER CAFA BECAUSE  
11 OF THE COUPON ELEMENT, CAFA REQUIRES AT LEAST WITH  
12 RESPECT TO THE COUPON ELEMENT, THAT THEIR FEE BE  
13 CONTINGENT BASED ON THE VALUE OF THE REDEEMED  
14 COUPONS.

15 BUT THEY GET AROUND THAT BY ARGUING THAT  
16 THE EQUITABLE RELIEF IN THIS CASE, WHICH I THINK IS  
17 LARGELY ELUSORY AS WELL, IS WHERE THEY GET TO HAVE  
18 THEIR LOAD STAR, THE LOAD STAR APPROACH FOR THE  
19 ATTORNEY'S FEES REQUESTED.

20 SO THE PROBLEM HERE IS, YOUR HONOR, THAT  
21 LET'S ASSUME IT'S A LOUSY CASE, HEWLETT-PACKARD IS  
22 BUYING OUT AS CHEAPLY AS THEY CAN BUT THEY ARE THE  
23 PUTTING THE CARROT FOR THE ATTORNEY'S FEES.  
24 THEY'RE REALLY JUST PAYING OFF LAWYERS TO GET RID  
25 OF THE CASE AND THE LAWYER'S INCENTIVES IS TO GET

1 RID OF THE CASE BECAUSE THEY ARE GOING TO BE PAID A  
2 LARGELY HIGH VALUE BASED ON THE LOAD STAR APPROACH.

3 AND I'M SAYING IF THE COURT DOESN'T THINK  
4 THIS IS A VERY GOOD CASE, MAKE THE ATTORNEYS LIVE  
5 WITH THAT RESULT.

6 AND WHAT COULD HAVE HAPPEN IS MAYBE, I  
7 KNOW THE COURT CANNOT REARRANGE A SETTLEMENT THAT'S  
8 PRESENTED TO THE COURT, YOU EITHER ACCEPT IT OR  
9 REJECT IT, BUT MAYBE YOU REJECT IT AND GIVE HINTS  
10 TO, YOU KNOW, HOW TO --

11 THE COURT: GIVE SOME GUIDANCE.

12 MR. MILER: -- TO IMPROVE IT.

13 WHAT'S HAPPENING HERE IS THE CLASS IS  
14 BEING SOLD OUT AND THE LAWYERS FEES ARE BEING  
15 PROTECTED AND IT WORKS TO THE ADVANTAGE OF HP THAT  
16 WANTS TO GET RID OF THIS CASE WITHIN ECONOMIC  
17 BOUNDS, AND IT WORKS TO THE ADVANTAGE OF THE CLASS  
18 ATTORNEYS WHO GET PAID AT THE END OF THE DAY.

19 AND SO MAKE THE CLASS LAWYERS BEAR THEIR  
20 SHARE OF RESPONSIBILITY OF THIS CASE AND NOT HAVE A  
21 FEE BONUS FOR BRINGING A LOUSY CASE.

22 THE COURT: OKAY. THANK YOU.

23 ANYONE ELSE WANT TO BE HEARD?

24 MR. HELFAND: GOOD MORNING, YOUR HONOR.

25 STEVEN HELFAND FOR LISA KAHLE AND

1 SARAH MCDONALD.

2 I NOTE PRELIMINARILY I CHECKED ON THE  
3 DOCKET FOR THE CASE AND I DID NOT SEE OUR OBJECTION  
4 THAT WE HAD FILED. AND I NOTICED IN SOME OF THE  
5 PAPERS THAT WERE FILED ON BEHALF OF THE SETTLING  
6 PARTIES THAT THEY INDICATED ON THE PART OF THE  
7 PLAINTIFFS THAT THERE WERE ONLY THREE OBJECTIONS.  
8 I DON'T THINK THEY COUNTED OURS.

9 THE COURT: OKAY. WE WILL MAKE SURE  
10 WE'VE GOT IT IN FRONT OF US BEFORE WE DO ANYTHING.

11 MR. HELFAND: WOULD YOU LIKE ANOTHER  
12 COPY?

13 THE COURT: NO. IF IT'S BEEN E-FILED,  
14 WE'LL FIND IT.

15 MR. HELFAND: WE DID NOT E-FILE IT, WE  
16 MAILED IT IN.

17 THE COURT: YOU MIGHT WANT TO GIVE THE  
18 CLERK AN EXTRA COPY THEN, THAT MIGHT HAVE BEEN THE  
19 PROBLEM.

20 ALL RIGHT. GO AHEAD.

21 MR. HELFAND: I WOULD JUST NOTE,  
22 YOUR HONOR, THAT IN THIS CASE WHERE YOUR HONOR  
23 SPECIFIED THAT IT CERTAINLY IS VERY IMPORTANT TO  
24 CONSIDER ALL THE FACTORS IN TERMS OF THE STRENGTHS  
25 AND WEAKNESSES OF THE CASE, THE PARTIES DIDN'T HAVE



1 TO STRUCTURE THE DEAL IN THE MANNER THAT IT WAS  
2 STRUCTURED.

3 SO WHERE YOU HAVE THOSE INHERENT  
4 LIMITATIONS IN TERMS OF TRANSFERABILITY WHERE YOU  
5 COULD ONLY TRANSFER THEM TO IMMEDIATE FAMILY  
6 MEMBERS, THAT'S A HUGE LIMITATION WHICH IMPACTS THE  
7 VALUE IN THE REAL WORLD FOR CLASS MEMBERS TO GET  
8 ANY VALUE OUT OF THE SETTLEMENT.

9 IN TERMS OF THE LIMITATION AND THE TIME  
10 RESTRICTIONS ON THIS, THAT'S ALSO A HUGE  
11 DISADVANTAGE FOR THE CLASS.

12 SO WHERE YOU HAVE A -- LET'S SAY IT'S A  
13 WEAK CASE, THAT DOESN'T NECESSARILY EQUATE THAT YOU  
14 NEED TO THEN PUT IN THOSE LIMITATIONS WHICH  
15 SEVERELY CONSTRAIN THE CLASS FROM GETTING ANY VALUE  
16 FROM THE ADMITTEDLY LIMITED BENEFIT WHICH IS BEING  
17 OFFERED.

18 THE COURT: YEAH. I MEAN, ALL OF THE  
19 OBJECTORS ARE SAYING THE SAME THING IN DIFFERENT  
20 WAYS WHICH IS THAT THE CLASS REALLY ISN'T GETTING  
21 MUCH IN PROPORTION TO WHAT THE LAWYERS ARE GETTING.

22 MR. HELFAND: CORRECT. AND WE MAKE THAT  
23 ARGUMENT.

24 I DON'T WANT TO TAKE TOO MUCH OF YOUR  
25 TIME, SO WITH THAT I WOULD JUST SUBMIT, YOUR HONOR.

1 THE COURT: THANK YOU.

2 LET ME GIVE PLAINTIFF'S COUNSEL AN  
3 OPPORTUNITY TO RESPOND NOW.

4 MR. MCCARTHY: THANK YOU, YOUR HONOR.  
5 NIALL MCCARTHY.

6 I'M GOING TO ADDRESS SOME OF THE TOPICS  
7 RAISED, THEN I WILL TURN IT OVER TO MY COLLEAGUE  
8 MR. BERK.

9 I THINK THE CORE PROBLEM IS THE OBJECTORS  
10 HAVE A FANCIFUL VIEW OF CLASS ACTIONS THAT WHEN YOU  
11 FILE THEM THE DEFENDANTS BACK UP THE MONEY TRUCK  
12 AND THEY JUST PAY YOU WHAT YOU NEED.

13 THE REAL -- AND BY THE WAY, THEY ARE  
14 TALKING ABOUT THIS CASE LIKE IT'S SOME TYPE OF DUMP  
15 AND RUN. WE HAVE BEEN WORKING ON THIS CASE FOR  
16 FIVE AND A HALF YEARS.

17 THIS IS NOT A CASE THAT WE FILED AND WE  
18 PURSUED SETTLEMENT IMMEDIATELY. WE HAVE BEEN HERE  
19 FIVE AND A HALF YEARS. ON THE FIRST TWO CASES  
20 CIOLINO AND RICH, THERE'S ALMOST 400 ENTRIES ON THE  
21 DOCKET.

22 SETTLEMENTS ARE A FUNCTION OF LEVERAGE.  
23 IN THIS CASE AS THE EXTENSIVE DISCOVERY UNFOLDED,  
24 THE FACTS DID NOT GO AS WE HAD HOPED. WE HAD A  
25 RULE 12 MOTION WHERE WE LOST MANY OF OUR CLAIMS.

1 WE HAD A SUMMARY JUDGEMENT MOTION WHERE THE COURT  
2 MADE VERY CLEAR YOU FELT OUR EVIDENCE WAS WEAK.  
3 AND THEN WE HAD A CLASS CERTIFICATION MOTION FOR  
4 THE CLASS WAS A NATIONWIDE BASIS.

5 ALL OF THAT DIMINISHED OUR LEVERAGE AND  
6 ADDED TO THE DEFENDANT'S LEVERAGE. SO WHAT DID WE  
7 DO? WE PACKAGED A SETTLEMENT THAT WE THINK IS  
8 EXTREMELY FAIR ON THE DATE THE SETTLEMENT WAS  
9 REACHED, NOT ON THE DATE THE COMPLAINT WAS FILED.

10 BECAUSE AS I READ THE OBJECTIONS WHAT WAS  
11 STRIKING TO ME WAS WHAT THE COURT POINTED OUT, NO  
12 ONE IS TALKING ABOUT THE MERITS.

13 IN MR. MILLER'S OBJECTION, HE HASN'T EVEN  
14 MENTIONED HP UNTIL PAGE 9. HE'S TALKING ABOUT THE  
15 FUNCTION OF OBJECTORS AND THE ROLE OF CLASS  
16 ACTIONS, AND THE PROBLEM IS THAT THE OBJECTORS  
17 AREN'T ABLE AT ALL, DUE TO THEIR OWN IDEOLOGY OR  
18 ECONOMIC MOTIVES, TO SEE THE OTHER SIDE. THEY HAVE  
19 A TOTAL INABILITY TO VALUE THE CASE.

20 NOW I HAVE BEEN DOING CLASS ACTIONS FOR  
21 19 YEARS. I'VE TRIED CLASS ACTIONS. I'M ONE OF  
22 THE FEW ATTORNEYS THAT I WOULD SUGGEST PROBABLY  
23 KNOW MORE ABOUT THIS WITH PRIOR CLASS ACTION, I'VE  
24 DONE MORE ON THIS CLASS ACTION, WITH THE EXCEPTION  
25 OF MR. LIVERSIDGE.

1 SO WE DON'T TAKE CASES AND FILE THEM IN  
2 ANOTHER COURTROOM, WE WORK CASES UP. WE DID A  
3 TREMENDOUS AMOUNT OF WORK ON THIS CASE. AT THE END  
4 OF THE DAY WHAT HAPPENED WAS THE FACTS CUT THEIR  
5 WAY. WE DID HAVE TO DEAL WITH THAT.

6 SO A SETTLEMENT MUST BE EVALUATED IN  
7 LIGHT OF THE FACTORS OF THE CASE.

8 ON THE FEES, THERE'S INNUENDO THAT WELL,  
9 THE ATTORNEYS ARE MAKING OUT HERE, THE ATTORNEYS  
10 ARE SELLING OUT THE CLASS.

11 ONE, THEY DON'T TALK ABOUT THE VALUE OF  
12 THE INJUNCTIVE RELIEF WHICH MR. BERK IS GOING TO  
13 DO.

14 BUT MORE IMPORTANTLY, NOT ONE OF THEM  
15 MENTIONS IN FIVE AND A HALF YEARS IN THIS CASE, THE  
16 LOAD STAR IS FRANKLY \$7 MILLION. THE FEES ARE  
17 ABOUT 2.3, \$600,000 OF THAT REQUEST IS A COST  
18 REIMBURSEMENT FOR EXPERTS, FOR DEPOSITIONS.

19 SO THE ATTORNEYS ARE NOT DOING WELL IN  
20 THIS CASE. NOT THAT THE ATTORNEYS ECONOMIC WELL  
21 BEING IS A CONSIDERATION, IT'S NOT; HOWEVER, THE  
22 INSINUATION IS THAT WHILE LAWYERS ARE GETTING  
23 RICHER THE CLASS GETS NOTHING.

24 THE LAWYERS AREN'T GETTING RICHER, THE  
25 LAWYERS ARE DOING EXTREMELY POOR.

1 THE COURT: WHAT ABOUT THE INTERPLAY  
2 BETWEEN THE FEES AND THE RATE OF RETURN ON THE  
3 E-CREDITS?

4 MR. MCCARTHY: WELL, UNDER CAFA IF THE  
5 COUPONS AND THE COUPONS ALONE WERE THE RESOLUTION,  
6 YOU LOOK AT THE RATE OF RETURN. THE RATE OF  
7 RETURN, NUMBER ONE, TODAY IT'S ABOUT \$1.2 MILLION  
8 IN CLAIMS.

9 NUMBER TWO, IT'S OPEN UNTIL  
10 FEBRUARY 15TH. AND TYPICALLY WE DO SEE A SPIKE AT  
11 THE END. WE'VE ISSUED TWO REPORTS ON THAT, A  
12 NUMBER OF CLAIMS, I DID A DECLARATION LATE  
13 NOVEMBER. WE ASKED THE CLAIMS ADMINISTRATOR TO  
14 FILE ONE TODAY.

15 BUT THERE WILL BE ADDITIONAL CLAIMS  
16 COMING IN. BUT WHEN YOU FACTOR IN THE INJUNCTIVE  
17 RELIEF WHICH ELIMINATES WHAT WE FELT WAS THE MOST  
18 OBJECTIONABLE WHICH WAS THE VISUAL IMAGE, IF THE  
19 COURT WILL RECALL FROM THE SUMMARY JUDGEMENT STAGE,  
20 THAT'S WHAT WE FOUND MOST OBJECTIONABLE HERE.  
21 THAT'S WHAT'S GOING TO BE REMOVED.

22 I ALSO THINK IT'S INTERESTING IN ONE OF  
23 THE OBJECTIONS, MR. CANNATA, THE GENTLEMAN WHO IS  
24 NOT HERE, HIS OBJECTION WAS THAT THE INJUNCTIVE  
25 RELIEF ISN'T LONG ENOUGH. AND THESE COUNSEL WERE

1 SAYING THE INJUNCTIVE RELIEF IS VALUELESS. HE'S  
2 APPARENTLY THINKS IT HAS GREAT VALUE BECAUSE HE WAS  
3 OBJECTING IT'S ONLY IN PLACE FOR THREE YEARS.

4 SO AMONG THE OBJECTORS THERE'S A WIDE  
5 VARIANCE.

6 WE COVERED MUCH OF THIS IN THE PAPERS.  
7 I'M GOING LET MR. BERK TALK ABOUT THE INJUNCTIVE  
8 RELIEF. MY FUNDAMENTAL CONCERN IS THAT THE  
9 OBJECTIONS ARE TOTALLY DIVORCED FROM --

10 THE COURT: THEY DON'T ADDRESS THE MERITS  
11 OF THE CASE AND THEY DON'T, IN YOUR PERSPECTIVE,  
12 ADDRESS THE VALUE OF THE INJUNCTION.

13 MR. MCCARTHY: AND MR. BERK WILL SPEAK TO  
14 THE INJUNCTION.

15 THE COURT: GO AHEAD.

16 MR. BERK: GOOD MORNING, YOUR HONOR.  
17 STEVEN BERK.

18 YOU MAY HAVE REMEMBERED I THINK MAYBE TWO  
19 OR THREE YEARS AGO I WAS HERE PRESENTING ARGUMENTS  
20 ON CLASS CERTIFICATION. SO I'VE TAKEN MY LUMPS IN  
21 THIS COURTROOM.

22 BUT DURING THAT PRESENTATION WE SHOWED  
23 THE COURT THE LOW INK WARNINGS THAT SHOW ABOUT THIS  
24 MUCH INK, THIS MUCH BEING FOR THE RECORD ABOUT A  
25 MILLIMETER, AND THE COURT LOOKED AT THOSE AND SAID

1 THOSE DO SEEM TO BE SOMEWHAT DECEPTIVE PARTICULARLY  
2 IF HP IS NOT SURE THOSE WARNINGS AREN'T ACCURATE.

3 SO AS MUCH AS OUR CASE HAS BEEN MALIGNED,  
4 TODAY THERE WAS A KERNEL OF SUBSTANCE, THERE WAS  
5 SOME STRENGTH TO THE CASE.

6 THE COURT: JUST SO THE RECORD IS CLEAR,  
7 AND IT'S VERY HARD BECAUSE SO MANY OF US USE HP  
8 COMPUTERS, IT'S HARD NOT TO PERSONALIZE IT.

9 THE PROBLEM FROM MY PERSPECTIVE IN TERMS  
10 OF THE MERITS OF THE CASE WASN'T THAT THE PICTURES  
11 WERE MISLEADING, I THINK MY OWN EXPERIENCE AND THAT  
12 THEY OFTEN ARE, IT'S THAT TO USE THE VERNACULAR, SO  
13 WHAT? YOU JUST DON'T PAY ANY ATTENTION TO THE  
14 PICTURES AND YOU KEEP EXTRA INK CARTRIDGES AROUND.

15 SO THE DIFFICULTY FROM MY PERSPECTIVE HAS  
16 ALWAYS BEEN IT'S JUST -- IT DOESN'T STRIKE ME AS  
17 THE MOST AWFUL FRAUD I EVER SAW.

18 MR. BERK: WELL, YOUR HONOR --

19 THE COURT: I DON'T WANT TO GET INTO  
20 ARGUMENT ON THE MERITS BECAUSE WE HAVE A SETTLEMENT  
21 HERE.

22 I'M JUST SAYING IN THINKING ABOUT THIS IT  
23 WASN'T THAT THERE WASN'T SOMETHING MISLEADING AS TO  
24 THE PICTURES, BUT PARTICULARLY ONCE HP STARTED  
25 PUTTING ON THE BOXES, INK LEVELS MAY VARY, THEN

1 CONSUMERS REALLY WOULD HAVE A HARD TIME SAYING,  
2 WELL, WE RELIED ON THIS, WE BOUGHT EXTRA INK  
3 CARTRIDGES AND THERE WAS SOME SORT OF HIGHWAY  
4 ROBBERY GOING ON. I DON'T MEAN TO DUMP ON YOUR  
5 CASE, BUT I THINK THAT WAS THE PROBLEM.

6 MR. BERK: YOUR HONOR, AND I ABSOLUTELY  
7 AGREE WITH YOU --

8 THE COURT: YEAH.

9 MR. BERK: BUT IT'S A MATTER OF DEGREE.

10 THERE'S 13 MILLION, POTENTIALLY 13  
11 MILLION CLASS MEMBERS. AND WHILE THE COURT FIGURED  
12 IT OUT AND PERHAPS EVERYONE IN THIS COURTROOM  
13 FIGURED IT OUT, THERE WERE SOME PEOPLE THAT DIDN'T  
14 FIGURE IT OUT.

15 AND THERE'S A VERY GOOD DECLARATION BY  
16 JONATHAN FULLERTON WHICH WAS ATTACHED TO OUR PAPERS  
17 AND ATTACHED TO MR. LIVERSIDGE'S PAPERS THAT SORT  
18 OF WENT THROUGH THE STATISTICS OF HOW MANY PEOPLE  
19 MAY WELL RELY ON THESE WARNINGS. MY MOTHER MAY  
20 RELY. PEOPLE WHO ARE UNSOPHISTICATED WITH RESPECT  
21 TO THE COMPUTERS AND PRINTERS.

22 SO THOSE ARE THE PEOPLE WE ARE TRYING TO  
23 HELP. AND IT MAY NOT BE A LOT, BUT TWO PERCENT IS  
24 A NUMBER WE'VE THROWN AROUND, AND TWO PERCENT OF 13  
25 MILLION IS STILL A FAIR AMOUNT OF PEOPLE.



1 SO WE THINK WE'VE DONE SOMETHING POSITIVE  
2 HERE, WE REALLY DO. IF WE'VE DONE SOMETHING  
3 POSITIVE FOR 100,000 PEOPLE OR 150,000 PEOPLE OR  
4 400,000 PEOPLE, THAT'S SOMETHING WE SHOULDN'T  
5 CHANGE THAT, AND WHAT I'VE HEARD THE OBJECTORS SAY  
6 TODAY IS IT COULD BE BETTER, IT COULD BE BETTER.

7 AS THE COURT KNOWS THAT'S NOT THE  
8 STANDARD OF COURSE, SOMEBODY COULD COME IN AT THE  
9 END OF THE DAY AND THEY COULD DO BETTER.

10 LET ME GET TO THE CRUX OF IT WHICH IS THE  
11 VALUE OF THE RELIEF HERE. I THINK WE TALKED ABOUT  
12 THE VALUE OF THE E-CREDITS AND COUPONS.

13 LET ME SAY ANYTHING ABOUT THE E-CREDITS  
14 OR COUPONS WHICH HAVE A BAD NAME UNDER CAFA. IN  
15 THE TRUE V. HONDA CASE I BELIEVE IT WAS A 500 OR  
16 THOUSAND DOLLAR CREDIT ON A NEW CAR A 20 OR \$30,000  
17 CAR. IN THE GM CASE, ALSO CITED BY MR. FRANK, IT  
18 WAS A CREDIT ON A BRAND NEW CAR.

19 SO YOU ARE LOOKING AT A SMALL, MAYBE A  
20 LARGER COUPON OR LARGER E-CREDIT BUT FOR SOMETHING  
21 THAT'S INCREDIBLY EXPENSIVE, WHEREAS HERE THE  
22 CREDITS OR THE COUPONS ARE FOR -- YOU CAN USE THEM  
23 TO BUY PAPER, YOU CAN USE THEM TO BUY PRINTER  
24 SUPPLIES, YOU CAN USE THEM FOR CARTRIDGES. IT MAY  
25 NOT GET YOU ALL THE WAY THERE BUT IT COULD GET YOU

1 60 OR 70 PERCENT THERE.

2 SO TO SUGGEST THAT THEY'RE THE SAME AS  
3 THE \$1,000 FOR A NEW CAR WHICH WOULD BE MAYBE  
4 1/30TH OF THE COST WE ARE TALKING ABOUT, 60 OR  
5 70 PERCENT --

6 THE COURT: OKAY. TALK TO ME A LITTLE  
7 BIT ABOUT THE INJUNCTION.

8 MR. BERK: SO THERE'S THAT VALUE THERE.  
9 I APOLOGIZE FOR GOING ON.

10 THE SECOND PART IS THE INJUNCTIVE RELIEF.  
11 WHAT WE'RE GOING TO DO IS TWO-FOLD.

12 WE ARE SORT OF PROUD OF THIS. WE ARE  
13 GOING TO GET RID OF THOSE VISUAL WARNINGS, HP IS  
14 GOING TO GET RID OF THOSE VISUAL WARNINGS BECAUSE  
15 THEY ARE INACCURATE.

16 AND THAT'S AN IMPORTANT THING BECAUSE  
17 THAT'S SOMETHING THE COURT RECOGNIZED, THAT'S  
18 SOMETHING FOCUS GROUPS RECOGNIZED, SOMETHING OUR  
19 EXPERT TALKED ABOUT IS SOMEBODY WILL SEE A VISUAL  
20 AND THEY WILL FORGET THE WORDS. AND THAT'S GOING  
21 TO BE GONE UNTIL, FOR AT LEAST THREE YEARS AND  
22 UNTIL HP COMES UP WITH TECHNOLOGY THAT'S A LITTLE  
23 BIT MORE ACCURATE, SO THAT'S VERY IMPORTANT.

24 THE SECOND THING WE ARE GOING TO BE ABLE  
25 TO DO IS WE ARE GOING TO BE ABLE TO HAVE ADDITIONAL

1       WARNINGS BOTH IN MANUALS, BOTH ON THE WEBSITE, AND  
2       OTHER AREAS WHERE HP IS NOT ONLY GOING TO EXPLAIN  
3       WHAT THEY'VE BEEN EXPLAINING, BUT THEY'RE  
4       AFFIRMATIVELY GOING TO SAY, DO NOT DISCARD YOUR  
5       CARTRIDGES ON THE LOW INK WARNING, MAKING IT  
6       CRYSTAL CLEAR PEOPLE SHOULDN'T DO THAT.

7               SOME PEOPLE MIGHT SAY NO ONE LOOKS AT  
8       THOSE WARNINGS, IT'S FINE PRINT. IT'S NOT FINE  
9       PRINT, YOUR HONOR. IT'S SOMETHING HP WILL DO AS AN  
10      ADD ON, SOMETHING SPECIAL, SOMETHING DIFFERENT, AND  
11      IF PEOPLE HAVE QUESTIONS THEY'LL GO ON TO THE  
12      WEBSITE AND SEE THAT.

13             WE THINK THAT HAS VALUE. DOES IT HAVE  
14      HUNDREDS AND MILLIONS OF DOLLARS WORTH OF VALUE?  
15      NO, WE DON'T SAY THAT.

16             WE HAD AN EXPERT REPORT OR A REPORT BY AN  
17      ECONOMIST WHO TRIED TO VALUE THAT SOMEWHAT  
18      CONSERVATIVELY AND CAME UP WITH A NUMBER BETWEEN  
19      \$14 AND \$41 MILLION.

20             IT'S A TOUGH NUMBER TO FIGURE OUT BECAUSE  
21      YOU ARE TRYING FIGURE OUT WHAT PEOPLE'S  
22      EXPECTATIONS ARE AND WHAT THEIR CONDUCT IS GOING TO  
23      BE.

24             BUT YOUR HONOR, IT HAS VALUE. IT HAS  
25      VALUE TO TAKE THOSE DISCLOSURES AND ENHANCE THEM.

1 IT HAS VALUE SO THAT PEOPLE KNOW, THE TWO PERCENT  
2 OF PEOPLE THAT MAY NOT BE GETTING IT WILL HAMMER IT  
3 HOME AND SAY, DON'T DO THIS.

4 SO WE THINK AT THE END OF THE DAY WELL,  
5 GOSH, WE STARTED THIS CASE FIVE AND A HALF YEARS  
6 AGO, I WISH WE WOULD HAVE GOTTEN MORE. WE WENT  
7 DOWN EVERY RABBIT HOLE. WE LOOKED HERE AND WE  
8 LOOKED THERE.

9 I WANT TO READ THIS VERY BRIEFLY. THIS  
10 IS FROM MR. MILLER'S OBJECTIONS. HE SAYS, "IT'S  
11 OBVIOUS THERE ARE MONUMENTAL PROBLEMS WITH THE  
12 PRINTER CARTRIDGE. THERE'S STRONG EVIDENCE THE  
13 DEFECT OF THE PRINTER CARTRIDGES SUBJECT TO THIS  
14 LITIGATION ARE A SHAM AND HAVE BEEN ENGINEERED TO  
15 CAUSE A GROWTH IN SALES."

16 WELL, THERE'S NO EVIDENCE OF THAT. AND  
17 YOUR HONOR, I LOOKED THROUGH THAT EVIDENCE I WENT  
18 TO PORTLAND, OREGON FOR SIX MONTHS AND DID  
19 DEPOSITIONS. WE LOOKED THROUGH HUNDREDS OF  
20 THOUSANDS OF DOCUMENTS LOOKING FOR THAT KIND OF  
21 EVIDENCE AND IT WASN'T THERE.

22 SO OUR CASE GOT SMALLER BUT AT THE END OF  
23 THE DAY I THINK THE SETTLEMENT IS EMINENTLY FAIR  
24 AND EMINENTLY REASONABLE.

25 THE COURT: THANK YOU.

1 I NEED TO BRING THIS TO A CLOSE. IT'S  
2 BEEN HELPFUL. YES, MR. FRANK, YOU HAVE 30 SECONDS.

3 MR. FRANK: VERY QUICKLY.

4 I HEARD THE OBJECTORS DIDN'T ADDRESS THE  
5 INJUNCTIVE RELIEF. WE EXTENSIVELY BRIEFED THAT.  
6 WE CITED CASES AND WE DEMONSTRATED THE EXPERT  
7 REPORT. SO TO SAY WE DIDN'T ADDRESS THE INJUNCTIVE  
8 RELIEF --

9 THE COURT: I THINK EVERYTHING WAS  
10 ADDRESSED AND THE PAPERS ARE QUITE THOROUGH.

11 I THINK THE THINGS I TRIED TO FOCUS ON  
12 REALLY WAS THE ONE THING I THOUGHT WAS NOT  
13 ADDRESSED AS WELL AS IT MIGHT HAVE BEEN IN SOME OF  
14 THE OBJECTIONS WAS THE ISSUE OF THE MERITS.

15 BECAUSE I THINK THIS IS, WITH ALL RESPECT  
16 TO PLAINTIFF'S COUNSEL AND I APPRECIATE THEIR  
17 CANDOR HERE THIS MORNING, THIS IS NOT THE CASE THEY  
18 THOUGHT IT WAS WHEN THEY FILED IT FIVE YEARS AGO.

19 THERE'S CERTAINLY SOMETHING TO IT TO  
20 SURVIVE SUMMARY JUDGEMENT BUT IT'S NOT THE CASE  
21 THEY THOUGHT IT WAS. AND I THINK THAT HAS TO BE  
22 KEPT IN MIND AS WE EVALUATE THIS.

23 I THINK THERE ARE A NUMBER OF  
24 COMPLEXITIES THAT THE COURT HAS TO WORK THROUGH  
25 UNDER CAFA, THE COUPON ASPECT OF IT. THE COURT

1 DOES HAVE TO ASSESS THE VALUE OF THE INJUNCTIVE  
2 RELIEF TO MAKE A CONCLUSION ABOUT THAT AND LOOK AT  
3 FEES AND THE RELATIVE BENEFIT TO THE CLASS AND TO  
4 THE LAWYERS.

5 I WILL DO ALL OF THAT AND I WILL GET  
6 SOMETHING OUT TO YOU SOON.

7 MR. BERK: THANK YOU, YOUR HONOR.

8 MR. LIVERSIDGE: THANK YOU, YOUR HONOR.

9 THE COURT: WE WILL TAKE A TEN-MINUTE  
10 RECESS.

11 (WHEREUPON A RECESS WAS TAKEN.)

12 (WHEREUPON, THE PROCEEDINGS IN THIS  
13 MATTER WERE CONCLUDED.)  
14  
15  
16  
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25

**CERTIFICATE OF REPORTER**

I, THE UNDERSIGNED OFFICIAL COURT  
REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,  
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
TRANSCRIPTION TO THE BEST OF MY ABILITY.

\_\_\_\_\_  
SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185